



DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 217, 234, and 235

[Docket DARS-2021-0020]

RIN 0750-AL49

Defense Federal Acquisition Regulation Supplement: Contract Authority for Development and Demonstration of Prototypes (DFARS Case 2021-D025)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2021 that amends the types of line items and contract options that may be included, subject to limitations, in certain contracts initially awarded pursuant to competitive solicitations.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Ms. Barbara J. Salcido, telephone 571-372-6102.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 86 FR 59951 on October 29, 2021, to revise the DFARS to implement paragraph (a)(2) of section 831 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2021 (Pub. L. 116-283). Section 831(a)(2) amends 10 U.S.C. 2302e(a) to revise the type of contract line items or options that may be included, without additional competition, in contracts initially awarded from the competitive selection of a proposal resulting from a broad agency announcement.

One respondent submitted a public comment in response to the proposed rule.

II. Discussion and Analysis

DoD reviewed the public comment in the development of the final rule. The public comment is outside the scope of this rule; therefore, there are no changes made to the final rule.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT), for Commercial Products Including Commercially Available Off-the-Shelf (COTS) Items, and for Commercial Services

This rule does not create any new solicitation provisions or contract clauses. It does not impact any existing solicitation provisions or contract clauses or their applicability to contracts at or below the simplified acquisition threshold, for commercial products including COTS items, or for commercial services.

IV. Expected Impact of the Rule

The final rule impacts DoD acquisition planning decisions for contract awards that will result from the competitive selection of a proposal in response to a broad agency announcement for which DoD intends to include a contract line item or option for the development and demonstration of technology developed under the contract. The final rule broadens the scope of effort for which these contract line items and contract options can be awarded and the type of funding that may be used to fund these line items or options. This final rule also helps streamline the process for moving technologies developed under such contracts from science and technology into production.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

VI. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801-808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of Federal Rules under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs has determined that this rule is not a major rule under 5 U.S.C. 804.

VII. Regulatory Flexibility Act

A final regulatory flexibility analysis (FRFA) has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

This final rule implements paragraph (a)(2) of section 831 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2021 (Pub. L. 116-283). The objective of this rule is to revise the type of contract line items or options that may be included, without additional competition, in contracts initially awarded from the competitive selection of a proposal resulting from a broad agency announcement.

When awarding such a contract, contracting officers may now include a contract line item or contract option for the "development and demonstration" of technology developed under the contract. This revision provides a broader scope of effort and funding for which these contract line items and contract

options can be awarded, which in turn helps streamline the process for moving technologies developed under such contracts from science and technology into production.

There were no significant issues raised by public comments in response to the initial regulatory flexibility analysis.

Based on data from the Federal Procurement Data System for FY 2018 through FY 2020, on average, DoD annually awards 300 contracts to 200 unique small entities using the competitive selection of proposals resulting from a broad agency announcement.

This rule does not impose any new reporting, recordkeeping, or other compliance requirements.

There are no significant alternatives to this rule that would accomplish the objective of the statute.

VIII. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 217, 234, and 235

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 217, 234, and 235 are amended as follows:

1. The authority citation for 48 CFR parts 217, 234, and 235 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 217—SPECIAL CONTRACTING METHODS

2. Amend section 217.202 by revising paragraph (2) to read as follows:

217.202 Use of options.

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(2) For a contract that is initially awarded from the competitive selection of a proposal resulting from a broad agency announcement, see 234.005-1 for the use of contract options for the development and demonstration or initial production of technology developed under the contract or the delivery of initial or additional items.

PART 234—MAJOR SYSTEM ACQUISITION

3. Amend section 234.005-1 by revising the introductory text and paragraph (1) to read as follows:

234.005-1 Competition.

A contract that is initially awarded from the competitive selection of a proposal resulting from a broad agency announcement (see 235.016) may contain a contract line item or contract option using funds not limited to those identified in 235.016 for the development and demonstration or initial production of technology developed under the contract, or the delivery of initial or additional items if the item or a prototype thereof is created as

the result of work performed under the contract, only when it adheres to the following limitations:

(1) The contract line item or contract option shall be limited to the delivery of the minimal amount of initial or additional items or prototypes that will allow for timely competitive solicitation and award of a follow-on development or production contract for those items.

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PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

4. Amend section 235.006-71 by revising paragraph (b) to read as follows:

235.006-71 Competition.

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(b) For a contract that is initially awarded from the competitive selection of a proposal resulting from a broad agency announcement, see 234.005-1 for the use of contract line items or contract options for the development and demonstration or initial production of technology developed under the contract or the delivery of initial or additional items.

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